

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MICHAEL TRACY MCLAUGHLIN

Petitioner,

vs.

BRIAN WILLIAMS, et al.,

Respondents.

Case No. 2:11-CV-00884-JCM-(LRL)

ORDER

Petitioner has submitted an application to proceed in forma pauperis (#5). The court finds that petitioner is unable to pay the filing fee.

Petitioner also has submitted a motion for stay and abeyance (#6). Currently, petitioner is pursuing post-conviction relief in the state courts. The state district court has denied his petition, and the appeal is pending. To stay this action, petitioner must show that he has “good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics.” Rhines v. Weber, 544 U.S. 269, 278 (2005). Petitioner’s claims have potential merit, and by filing his federal petition while his state petition is still pending, he is not being dilatory. Petitioner specifically states that he is commencing this action and asking for a stay so that he will not be time barred. The Supreme Court of the United States has held that such a protective petition is acceptable. Pace v. DiGuglielmo, 544 U.S. 408, 416-17 (2005). The court will stay and close this action. Petitioner will need to move to reopen the action after the conclusion of his post-conviction proceedings in state court.

1 Petitioner did not sign his petition. When he moves to reopen this action, he also will need
2 to submit an amended petition that he has signed. See 28 U.S.C. § 2242.

3 IT IS THEREFORE ORDERED that the application to proceed in forma pauperis (#5) is
4 **GRANTED**. Petitioner need not pay the filing fee of five dollars (\$5.00).

5 IT IS FURTHER ORDERED that petitioner's motion for stay and abeyance (#6) is
6 **GRANTED**.

7 IT IS FURTHER ORDERED that this action is **STAYED** pending exhaustion of the
8 unexhausted claims. Petitioner shall return to this court with a motion to reopen within sixty (60)
9 days of issuance of the remittitur by the Nevada Supreme Court at the conclusion of the state court
10 proceedings. Further, petitioner or respondents otherwise may move to reopen the action and seek
11 any relief appropriate under the circumstances.

12 IT FURTHER IS ORDERED that the clerk of court shall administratively close this action
13 until such time as the court grants a motion to reopen the action.

14 DATED: August 24, 2011.

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17 JAMES C. MAHAN
18 United States District Judge
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